

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 25 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

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Amendment of Section 73.202(b),)	MM Docket No. 97-8
Table of Allotments,)	RM-8957
FM Broadcast Stations.)	
(Amelia, Louisiana))	

To: Chief, Allocations Branch

REPLY COMMENTS

Guaranty Broadcasting Corporation ("Guaranty"), licensee of Radio Stations WGGZ(FM), Baton Rouge, Louisiana and WBBU(FM), Baker, Louisiana, by its attorneys, hereby submits the following reply comments in the above-captioned proceeding. The nominal petitioner in this proceeding is an entity called Amelia Broadcasting of Louisiana ("Amelia Broadcasting").¹ It proposes

¹ Although not apparent from the petition or opening comments in this proceeding, Guaranty has good reason to believe that the subject rulemaking proposal has been initiated by or on behalf of Roy E. Henderson, an individual who has been the driving force behind a number of FM application and rulemaking matters before the Commission in recent years, including those of a somewhat questionable nature. See Roy E. Henderson d/b/a Pueblo Radio Broadcasting Service, 5 FCC Rcd 4829 (Rev. Bd. 1990) (separate statement of Board member Eric T. Esbensen in which Board member Norman Blumenthal joins) ("[I]t is devoutly hoped that all interested parties -- competitors current and potential, the local citizenry, and the Commission -- keep a keen eye upon Henderson..."). Furthermore, as briefly noted in the attached statement of Randy W. Kendrick (Attachment 1), Guaranty's Treasurer, Mr. Henderson has already approached Guaranty in a

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to allot Channel 249C3 at Amelia, Louisiana. However, as we demonstrate below, in order to comply with applicable separation constraints, Amelia Broadcasting (or any other applicant for the Channel) would be forced to locate the proposed station within a geographic area that simply is not suitable for sustaining a radio tower. As such, Amelia Broadcasting's proposal must be rejected.

In its Notice of Proposed Rule Making ("NPRM") released January 17, 1997, the Commission expressed particular concern with "the suitability of the site" petitioner has chosen, emphasizing that a preliminary engineering analysis of its own had indicated that the site "is located in a relatively large swampy area." NPRM at 2. Accordingly, the Commission requested that Amelia Broadcasting "provide a showing demonstrating that a suitable fully-spaced area exists to locate a transmitter tower." Id.

Despite the Commission's direct inquiry on this critical threshold point, Amelia Broadcasting's comments of March 10,

(...Continued)

manner that suggests that the timing and motivation of this and a separate pending rulemaking impacting Guaranty's stations may be designed, at least in part, to give Mr. Henderson certain strategic business advantages wholly apart from the specific rulemaking proposal. The fact that Amelia Broadcasting's proposal would, as it happens, require building a station in an inaccessible, undeveloped swamp area bordering the Gulf of Mexico almost suggests, on its face, an alternative agenda.

1997, totally fail to provide the requisite showing. Instead of an appropriate engineering or similar statement, Amelia Broadcasting merely generalizes about the existence of some shipyards and retail establishments that bear no relationship whatsoever to the precise geographic area where the radio tower would be required to be located. Instead of focusing on the specific slice of Louisiana actually implicated by its proposal, Amelia Broadcasting merely exclaims that because there are shipyards somewhere in or around Amelia, "there must be sufficient dry ground upon which to construct an FM transmitter." In short, not only has Amelia Broadcasting patently failed to make the requested showing, it has, we submit, proffered an answer so ridiculous as to be both non-responsive and a direct affront to a legitimate Commission inquiry.

If, as petitioner suggests, someone from Amelia Broadcasting had actually flown over the specific area available for a radio site (as opposed to shipyards and retail establishments obviously located elsewhere), it would have discovered something far different than what is glibly portrayed in Amelia Broadcasting's comments. For example, appended hereto as Attachment 2 is a USGS 1:250,000 scale map showing the precise "area-to-locate" for the proposed FM station on Channel 249C3. As the map plainly demonstrates, the area where the suggested station would need to

be located falls entirely within a vast marsh or swamp area. There are, moreover, no roads providing access to the area.

Also appended hereto as Attachment 3 is a letter from Fred O. Dunham, Marine Fisheries Biologist Project Coordinator with the Louisiana Department of Wildlife and Fisheries. Mr. Dunham's letter not only confirms that the "area-to-locate" is almost one hundred percent marsh, but amply demonstrates the complete impracticality of locating a radio transmitter site in the area. First, the "area-to-locate" is inaccessible except by boat or special aircraft. Dunham Letter at 2. Travel by boat from the nearest dock would take approximately one hour under the best of conditions. Id. Second, the required radio tower would most likely have to be erected on a barge or other stationary platform (e.g., special pilings or piers) because of the unstable nature of the marsh's soil. Id. Third, Amelia Broadcasting (or other applicant) would have to obtain several regulatory permits to construct in the area. Id. Under the review process for such permits, the relevant agencies would strongly recommend that any structure be placed in such a manner as to avoid impacting the marsh (i.e., the tower would have to be placed on an existing platform with no construction or access required in the marsh). Id. Fourth, there is no power supply to the "area-to-locate" (oil and gas platforms located in this general marsh area are powered by special generators). Dunham Letter at 3. In view of

the foregoing, it is apparent that placing a radio transmitter tower (with associated equipment) in the "area-to-locate" is completely impractical, both economically and operationally.

Accordingly, a suitable site does not exist for the construction of the proposed radio facilities. Amelia Broadcasting has failed to demonstrate otherwise -- even though specifically urged to do so by the Commission. It would therefore be a waste of vital Commission resources to allot Channel 249C3 to Amelia, Louisiana. See Ocracoke, Edenton, Columbia, Pine Knoll Shores, North Carolina, 9 FCC Rcd 2011 (1994); Homerville, Lakeland and Statenville, Georgia, 6 FCC Rcd 5802 (1991).

WHEREFORE, the above premises considered, Guaranty Broadcasting Corporation respectfully submits that Amelia Broadcasting's proposal is wholly lacking in merit and its proposed allotment of Channel 249C3 at Amelia, Louisiana, should be summarily rejected.

Respectfully submitted,

GUARANTY BROADCASTING
CORPORATION

By: 

Carl R. Ramey
John M. Burgett

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Its Attorneys

March 25, 1997

ATTACHMENT 1

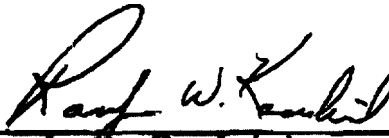
Declaration of Randy W. Kendrick

I, Randy W. Kendrick, under penalty of perjury, hereby declare as follows:

1. I am the Treasurer and a Director of Guaranty Broadcasting Corporation ("GBC"), the licensee of WBBU(FM), Baker, Louisiana; WGGZ(FM), Baton Rouge, Louisiana; WTGE(FM), Baton Rouge, Louisiana; KCIL(FM), Houma, Louisiana; and KJIN(AM), Houma, Louisiana.
2. On March 7, 1997, Roy Henderson visited GBC's offices in Baton Rouge, Louisiana, and met with me; George A. Foster, Jr., the President of GBC; and Greg Herpin, General Manager of WBBU, WTGE and WGGZ. At the outset of the meeting, Mr. Henderson advised us that he was in the process of applying for new FM allotments at Amelia, Louisiana, and Tylertown, Mississippi. Mr. Henderson stated that his proposed allotment at Tylertown would prevent GBC from upgrading WBBU from Class A to Class C3 facilities. Mr. Henderson also seemed to imply that the Amelia Class C3 allotment could adversely impact the competitive posture of our Houma FM station, KCIL. After several minutes of discussion about the Amelia and Tylertown allotments, Mr. Henderson advised us that he wanted to acquire KCIL and urged us to set a price. After some further discussion, I finally volunteered a possible price of \$6,000,000. Mr. Henderson responded with "I'll give you \$2,000,000." Mr. Henderson then said that he would not go forward with the Amelia and

- 2 -

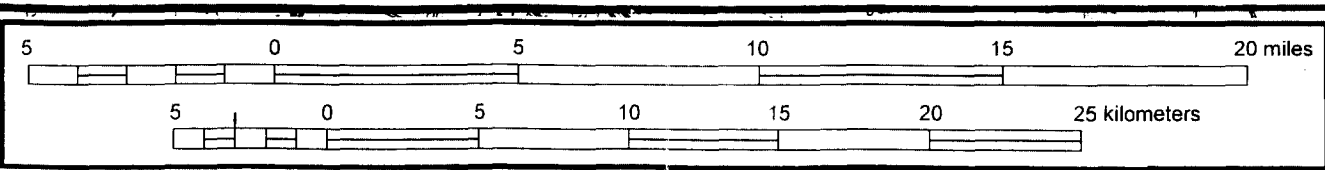
Tylertown allotments if he could get KCIL "at a deal."
The meeting concluded with no further substantive
discussion.



Randy W. Kendrick

Dated: March 25, 1997

ATTACHMENT 2



City Limits

AREA-TO-LOCATE
CH 249C3
AMELIA, LOUISIANA
 duTreil, Lundin & Rackley, Inc.

95.5 km from WGGZ
 CH 251C Baton Rouge, LA

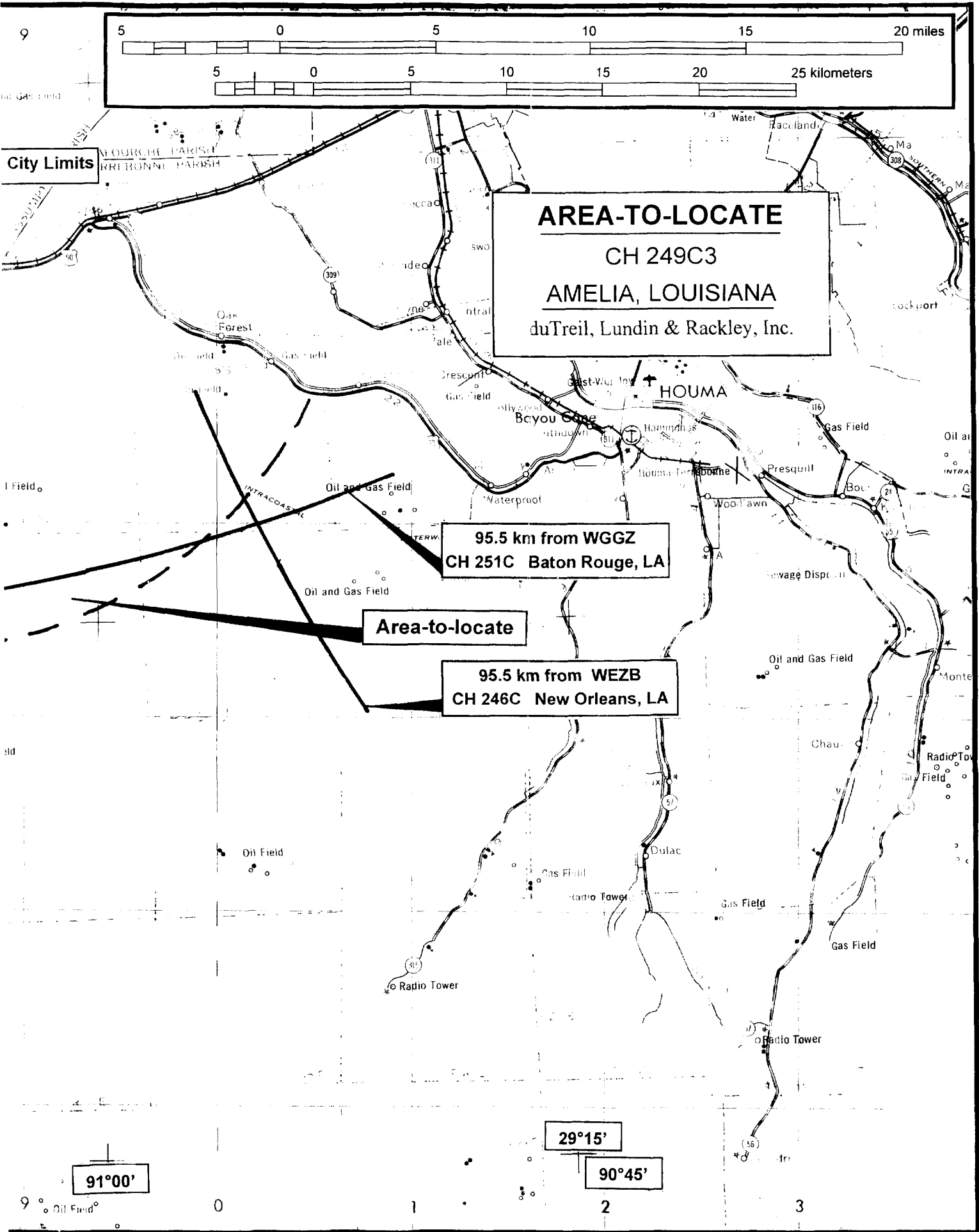
Area-to-locate

95.5 km from WEZB
 CH 246C New Orleans, LA

91°00'

29°15'

90°45'





Reference Point
CH 249C3 Amelia, Louisiana

Figures in red denote approximate distance, in miles, between stars.

ATTACHMENT 3

State of Louisiana



James H. Jenkins, Jr.
Secretary

Department of Wildlife and Fisheries
Post Office Box 98000
Baton Rouge, LA 70898-9000
(504)765-2800
March 24, 1997

M.J. "Mike" Foster
Governor

Mr. John M. Burgett
Wiley, Rein & Fielding
1778 K Street, N.W.
Washington, D.C. 20006

Re: Proposed FM Station at Amelia, Louisiana

Dear Mr. Burgett:

In response to your letter of March 20, 1997 concerning a proposed FM Station located near Amelia, Louisiana by Amelia Broadcasting of Louisiana, I submit the following comments addressing each of the nine items in your letter.

1. My job title is Marine Fisheries Biologist Project Coordinator.

2. I have received a map that is identified as:

AREA-TO-LOCATE

CH249C3

AMELIA, LOUISIANA

duTreil, Lundin & Rackley, Inc

3. I am familiar with the area which is identified on this map from my twenty-seven and half years of working for the Louisiana Department of Wildlife and Fisheries. During the course of these years, I have been in this area both on the ground via boats and in the air via aircraft. My job is to review proposed projects within the state and provide recommendations to either avoid or minimize the adverse impacts to fish and wildlife resources. I have reviewed projects in the area of concern on several occasions over past the twenty-one years.

4. The area is almost one hundred percent marsh with very small portions of it having swamp and shell middens. This area historically contained numerous natural waterbodies such as lakes, bayous, lagoons, and streams. Since the development of oil and gas

fields in the area, a system of canals has been dredged into the marsh resulting in more water interchange. This marsh is highly organic and is several feet thick.

5. Accessing the "Area-to-locate" will require either a boat or an aircraft. At times the waterways can be blocked by floating vegetation which can limit navigation to only certain boats equipped to navigate through this blockage. Travel by boat from the nearest boat dock will take approximately one hour under the best of conditions. Aircraft types accessing the area are limited to helicopters and float or amphibious airplanes. The floating vegetation will also limit the use of airplanes.

6. The construction of a radio tower in the "Area-to-locate" will take some special provisions. In my experience, I have reviewed the need for a few towers to be located in wetlands. However, each of these towers was located in a more stable soil except for those constructed by oil and gas companies in such marsh areas. Not knowing the size of the tower, type, or the on-the-grounds specific requirements, I have assumed that the tower requirements are similar to those used by the oil and gas companies. Their towers are either erected on barges, stationary platforms on pilings (piers) or on land when sufficient stability exists. In reference to permission to be granted for such construction please see the next item. Of course, permission would be needed from the landowner.

7. Depending on the type of construction and the existing conditions, there are several possible permits which maybe required. A worst case scenario would be where dredging of the marsh is required for the access to and construction of the tower plus the occurrence of an endangered species at or near the tower site. This scenario would have little chance of being permitted since there are enough existing impacted sites in the "Area-to-locate" to either avoid or greatly minimize any such impacts. The best case scenario is the erection of the tower on an existing platform where there is no impacts to the marsh from access or construction.

The possible permits that maybe required is the Coastal Use Permit from the Coastal Management Division of the Louisiana Department of Natural Resources, Section 10/404 permit from the U.S. Corps of Engineers New Orleans District and a water quality certification from the Louisiana Department of Environmental Quality. A formal application would be filed with each of the above regulatory agencies for processing.

8. Under the review process for the above referenced permits, both the regulatory and resources agencies would strongly recommend that the applicant place the tower in such a manner to avoid impacts to the marsh. Therefore, the placement of a tower on an existing platform with no construction or access necessary in the marsh would be the most favored option.

9. There are other concerns about locating a tower in the "Area-to-locate":

a. There is no electric power lines currently feeding into the "Area-to-locate". If a power line would be required, there could be significant adverse impacts to the marsh from constructing this line.

b. Oil and gas companies supply their own power with generators. If power for the tower is from generators, a contingency plan would need to exist for fuel spills and access for refueling.

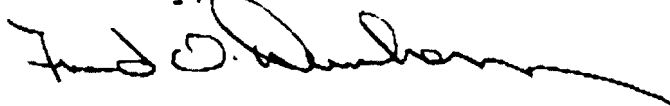
c. The tower would be located in an area subject to significant amount of migrating birds (e.g. waterfowl, song birds, etc.) which will increase the number of birds lost from collisions with the tower.

d. The tower will be located in area that is subject to the direct forces of tropical storms (e.g. hurricanes).

e. The tower will be located in area that is subject to high volume of low flying aircraft which supports the oil and gas industry.

The above is my opinion of a general overview of the proposed action.

Sincerely,

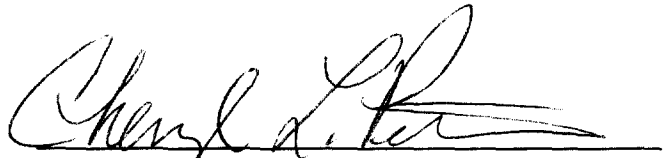
A handwritten signature in dark ink, appearing to read "Fred O. Dunham", with a long, sweeping horizontal line extending to the right.

Fred O. Dunham
Project Coordinator
Habitat Section

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March, 1997, I caused copies of the foregoing Reply Comments to be mailed via first-class postage prepaid mail to the following:

Henry E. Crawford, Esq.
1150 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036
Counsel for Amelia Broadcasting of Louisiana


Cheryl Petersen